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8 UNITED STATES DISTRICT COURT
9 CENTRAL DISTRICT OF CALIFORNIA
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11 TIFFANY M. P.,¹

12 Plaintiff,

13 v.

14 COMMISSIONER OF SOCIAL
15 SECURITY,

16 Defendant.

Case No. ED CV 18-00933 MWF (RAO)

ORDER ACCEPTING REPORT AND
RECOMMENDATION OF UNITED
STATES MAGISTRATE JUDGE

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18 Pursuant to 28 U.S.C. § 636, the Court has reviewed the complaint, all of the
19 other records and files herein, and the Report and Recommendation of United States
20 Magistrate Judge (“Report”) issued on February 27, 2019. The Court has further
21 engaged in a *de novo* review of those portions of the Report to which the
22 Commissioner has objected.

23 First, the Commissioner contends that the Administrative Law Judge (“ALJ”)
24 discussed the relevant regulatory factors for consideration of medical opinions. (Dkt.
25 No. 24 at 2-3.) The Commissioner states that the ALJ considered the consistency of
26 Dr. Gomer’s opinion with the record, the nature and extent of his treating relationship

27 ¹ Partially redacted in compliance with Federal Rule of Civil Procedure 5.2(c)(2)(B)
28 and the recommendation of the Committee on Court Administration and Case
Management of the Judicial Conference of the United States.

1 with Plaintiff, and his specialization. (*Id.* at 3.) Indeed, the ALJ noted that Dr. Gomer
2 was Plaintiff’s treating physician, and he provided her with medication. (AR 28-29.)
3 The ALJ also noted that Dr. Gomer provided a letter dated November 6, 2014, a
4 questionnaire dated March 3, 2015, and a questionnaire dated September 27, 2016.
5 (AR 29.) Finally, the ALJ determined that Dr. Gomer’s opinion was “inadequately
6 supported by clinical findings.” (*Id.*)

7 However, as stated in the Report, it is not clear that the ALJ considered all of
8 the necessary factors. *See* Soc. Sec. Ruling 96-2p, 1996 WL 374188, at *4 (the
9 opinion “must be weighed using *all* of the factors provided in 20 C.F.R. §§ 404.1527
10 and 416.927” (emphasis added)). Although the ALJ is not required to analyze each
11 factor in detail, he must indicate that he has considered all of the relevant factors.
12 *See Carbajal v. Berryhill*, No. EDCV 17-0970-AFM, 2018 WL 1517161, at *4 (C.D.
13 Cal. Mar. 27, 2018) (collecting cases); *Clark v. Berryhill*, No. 3:16-CV-02854-BEN-
14 AGS, 2018 WL 948489, at *2 (S.D. Cal. Feb. 20, 2018); *see also Kelly v. Berryhill*,
15 732 F. App’x 558, 562 n.4 (9th Cir. 2018) (“a cursory acknowledgment” of a
16 physician as a “treating physician” does not indicate that the factors were properly
17 considered). Here, the record reflects that Dr. Gomer specializes in internal medicine
18 and treated Plaintiff once every one to five months from August 2013 through
19 January 2015. (*See* AR 524, 557-78.) The ALJ did not indicate that he considered
20 Dr. Gomer’s specialization, frequency of examination, or length of treatment
21 relationship. The ALJ’s failure to properly consider all of the relevant factors when
22 weighing a treating physician’s opinion is reversible legal error and is not harmless.
23 *See Trevizo v. Berryhill*, 871 F.3d 664, 676 (9th Cir. 2017).

24 Second, the Commissioner contends that the ALJ reasonably discounted
25 Plaintiff’s subjective complaints based on routine and conservative treatment. (Dkt.
26 No. 24 at 3-4.) The Commissioner notes that the ALJ did acknowledge that Plaintiff
27 was financially unable to take advantage of referrals to specialists. (*Id.* at 4.)
28 Nevertheless, under these circumstances, the ALJ improperly faulted Plaintiff for not

1 seeking or receiving treatment from a specialist rather than from her general
2 practitioner. (AR 28.) *See Carmickle v. Comm’r of Soc. Sec. Admin.*, 533 F.3d 1155,
3 1162 (9th Cir. 2008) (conservative treatment “is not a proper basis for rejecting the
4 claimant’s credibility where the claimant has a good reason for not seeking more
5 aggressive treatment” (citing *Orn v. Astrue*, 495 F.3d 625, 638 (9th Cir. 2007))); *see*
6 *also Gamble v. Chater*, 68 F.3d 319, 321 (9th Cir. 1995) (“Disability benefits may
7 not be denied because of the claimant’s failure to obtain treatment he cannot obtain
8 for lack of funds.”); *Regennitter v. Comm’r of Soc. Sec. Admin.*, 166 F.3d 1294, 1297
9 (9th Cir. 1999) (the Ninth Circuit “ha[s] proscribed the rejection of a claimant’s
10 complaints for lack of treatment when the record establishes that the claimant could
11 not afford it” (citing *Smolen v. Chater*, 80 F.3d 1273, 1284 (9th Cir. 1996))).

12 The Commissioner also argues that, because Plaintiff was treated only with
13 medications, it was reasonable for the ALJ to consider a lack of more aggressive
14 treatment. (Dkt. No. 24 at 4.) However, “the fact that treatment may be routine or
15 conservative is not a basis for finding subjective symptom testimony unreliable
16 absent discussion of the additional, more aggressive treatment options the ALJ
17 believes are available.” *See Moon v. Colvin*, 139 F. Supp. 3d 1211, 1220 (D. Or.
18 2015) (citing *Lapeirre-Gutt v. Astrue*, 382 F. App’x 662, 664 (9th Cir. 2010)). Here,
19 no additional, more aggressive treatment was discussed, nor is it apparent from the
20 record that any such treatment was available to Plaintiff. Thus, the ALJ improperly
21 discredited Plaintiff’s subjective complaints on this basis. *See Lapeirre-Gutt*, 382 F.
22 App’x at 664 (“A claimant cannot be discredited for failing to pursue non-
23 conservative treatment options where none exist.”).

24 Accordingly, the Court hereby accepts and adopts the findings, conclusions,
25 and recommendations of the Magistrate Judge.


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1 IT IS ORDERED that the decision of the Commissioner of Social Security is
2 reversed, and the matter is remanded for further administrative action.

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4 DATED: July 17, 2019


MICHAEL W. FITZGERALD
UNITED STATES DISTRICT JUDGE